

## TABLE OF CASES CITED

	PAGE
<i>Crown Cork &amp; Seal Co. v. Ferdinand Gutmann Co.</i> , 304 U. S. 159 .....	3
<i>Exhibit Supply Co. v. Ace Patents</i> , 315 U. S. 126 ....	3
<i>Fashion Originators Guild v. Federal Trade Commis- sion</i> , 312 U. S. 457 .....	3
<i>General Talking Pictures Corp. v. Western Electric Company</i> , 304 U. S. 175 .....	3
<i>Graver Tank &amp; Mfg. Co. Inc. et al. v. The Linde Air Products Co.</i> , Nos. 184-5 .....	1, 2, 3
<i>Mantle Lamp Co. of America v. Aluminum Products Co.</i> , 297 U. S. 638 .....	3
<i>Mercoid Corporation v. Mid-Continent Investment Co.</i> , 320 U. S. 661 .....	3
<i>Mercoid Corporation v. Minneapolis-Honeywell Regu- lator Co.</i> , 320 U. S. 680 .....	3
<i>Millinery Creator's Guild v. Federal Trade Commis- sion</i> , 312 U. S. 469 .....	3
<i>Muncie Gear Co. v. Outboard Co.</i> , 315 U. S. 759 .....	3
<i>Nelson v. Montgomery Ward &amp; Co.</i> , 312 U. S. 373...	3
<i>Nelson v. Sears, Roebuck &amp; Co.</i> , 312 U. S. 359 .....	3
<i>Triplett et al. v. Lowell et al.</i> , 297 U. S. 638 .....	3



IN THE  
**Supreme Court of the United States**

October Term, 1948

REMINGTON RAND INC.,

*Petitioner,*

vs.

ROYAL TYPEWRITER COMPANY, INC.,

*Respondent.*

No. 183

**PETITION FOR REHEARING**

TO THE HONORABLE THE CHIEF JUSTICE AND THE ASSO-  
CIATE JUSTICES OF THE SUPREME COURT OF THE  
UNITED STATES:

The basis of this petition for rehearing is that since the original petition was presented, this Court on October 11, 1948 has granted certiorari in *Graver Tank & Mfg. Co. Inc. et al. v. The Linde Air Products Co.*, Nos. 184-5, this term, in which the two principal reasons relied on for allowance of the writ are the same as the two reasons relied upon in the present case.

**I.**

The first reason relied upon for the allowance of the writ in the *Graver* case was that "the possibility of conflict between circuits is remote" (Petition, p. 17). As we showed in our original petition (pp. 8, 14), the possibility of conflict between circuits is even more remote in the present case, because every manufacturer of typewriters within the United States is subject to suit on the Woodfine patent in the Second Judicial Circuit.

## II.

The second reason advanced in the petition in the *Graver* case was that "important questions of patent law have been decided in a manner in conflict with the decisions of this Court" (Petition, p. 17). The second point of law advanced in support of this reason was as follows:

"(b) To expand unambiguous composition claims calling for alkaline earth metal silicates, the court below reached to the specifications. As this Court's cases since *White v. Dunbar* (1886), 119 U. S. 47, 51-2 and *McClain v. Ortmyer* (1891), 141 U. S. 419, 423-4 show, the claims measure the grant, and, while they may be limited, they may not be enlarged by the specifications." (Petition, P. 18.)

In the present case the Court below departed even further from the rule that the claims measure the patent grant and, instead of merely reaching to the specifications, went completely outside a patent for a minor improvement in a crowded art, not followed by the respondent in its own construction, and held infringement by a device not disclosed in the specifications and excluded by the express terms of the patent claims.\*

Thus, the second reason relied upon for the granting of the writ in both cases involves the very same point of law, namely, the misapplication of the doctrine of equivalents. In the present case, this has resulted in an unwarranted extension of the patent monopoly contrary to the public interest.

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\*The trial court found that "Admittedly the claims do not read literally upon the infringing device". (R. 236).

## III.

A close analogy to the present situation was presented in *Exhibit Supply Co. v. Acc Patents*, 315 U. S. 126, in which the Court originally denied a petition for certiorari and then granted certiorari on a petition for rehearing (314 U. S. 705), which pointed out common points of law between that case and *Muncie Gear Co. v. Outboard Co.*, 315 U. S. 759, in which certiorari had been granted on the same day (314 U. S. 594) that it had been originally denied in the *Exhibit* case (314 U. S. 637).

As pointed out in the petition for rehearing in the *Exhibit* case, where two cases thus present related questions of law, this Court has frequently heard and determined them together.\*

We respectfully suggest that the intervening circumstance of the granting of the writ in the *Graver* case requires that the Court shall not refuse to review the present case at this time unless satisfied of the soundness of the decision below expanding the monopoly of the Woodfine patent far beyond the express limitations of its claims, especially since it is highly improbable that a conflict between circuits will occur, and the two cases involve common points of law and may be conveniently considered together.

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\**Fashion Originators Guild v. Federal Trade Commission*, 312 U. S. 457, and *Millinery Creator's Guild v. Federal Trade Commission*, 312 U. S. 469; *Nelson v. Sears, Roebuck & Co.*, 312 U. S. 359, and *Nelson v. Montgomery Ward & Co.*, 312 U. S. 373; *Crown Cork & Seal Co. v. Ferdinand Gutmann Co.*, 304 U. S. 159, and *General Talking Pictures Corp. v. Western Electric Company*, 304 U. S. 175; *Triplett et al. v. Lowell et al.*, 297 U. S. 638, and *Mantle Lamp Co. of America v. Aluminum Products Co.*, 297 U. S. 638; *Mercoird Corporation v. Mid-Continent Investment Co.*, 320 U. S. 661, and *Mercoird Corporation v. Minneapolis-Honeywell Regulator Co.*, 320 U. S. 680.

WHEREFORE, petitioner prays that this petition for rehearing of the petition for writ of certiorari be granted, that the cause be reviewed and that the judgment of the Court of Appeals for the Second Circuit be reversed.

Respectfully submitted,

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*Counsel for Petitioner.*

HENRY R. ASHTON,  
FRANCIS J. McNAMARA,  
CONRAD CHRISTEL,  
*Of Counsel.*

October 25, 1948

#### **Certificate of Counsel**

I hereby certify that the foregoing petition is presented in good faith and not for delay, and that the petition is restricted to the grounds specified in Rule 33, subdivision 2, of the Rules of this Court.

EDWIN T. BEAN,  
*Counsel for Petitioner.*